IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9143 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANILKUMAR KISHANBHAI PANIKAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR DN PATEL L. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 10/03/2000

ORAL JUDGEMENT

The detenu has moved this Court by filing this petition under Article 226 of the Constitution of India on the ground that the order of detention made by the Commissioner of Police, Rajkot on 7.8.99 in exercise of powers under the provisions contained in the Prevention of Anti Social Activities Act, is bad in law.

Reading the grounds of detention, it appears that on 23.4.1998 information was lodged before the Malaviyanagar Police Station alleging that from the possession of the detenu 16 english liquor bottles were found without pass or permit and the case is pending before the Court. Other two cases are also registered. Reading the grounds of detention, it appears that the investigation is pending. In one case lodged against the detenu on 3.8.99, english liquor bottles 10 in number were found from his possession. On 3.8.99 english liquor bottle 30 in number were found from his possession. That the detaining authority was satisfied that the detenu is a bootlegger.

Without examining the grounds of detention, this matter is required to be disposed of only on the short ground that the detaining authority namely Commissioner of Police could not have passed the order of detention detaining the detenu for a period of one year.That order is without jurisdiction. This Act has not conferred any powers on the Commissioner of Police to detain a person for specified period. Under the law, it is for the State Government to pass order after receiving the opinion from the Advisory Board that the order of detention which is made by the detaining authority is just and proper and in accordance with law. In Special Civil Application No. 10514/99 this Court has considered this submission in detail and it is held that the Commissioner of Police is not authorised to make the order of detention detaining the detenu for a period of one year or for any specified term. It is only for the State Govrnment to confirm the order of detention and to make an order detaining the detenu for a period of one year or less then that. Thus, in view of what is stated hereinabove, the order of detention being illegal and bad in law, is required to be quashed and set aside.

In the result, this petition is allowed. The detenu-Anilkumar Kishanbhai Panikar is ordered to be released forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

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